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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. **1280**

MARY VIELLE LUKIN, MARY LUKIN, Adminis-
tratrix of the estate of John Vielle, deceased; MARY
VIELLE, FRANCIS VIELLE, PETER VIELLE,
CECILLE VIELLE TROMBLEY, ISABELLE
VIELLE, THERESA JARVIS, MARTHA VIELLE
GALLINEAUX,

Petitioners,

vs.

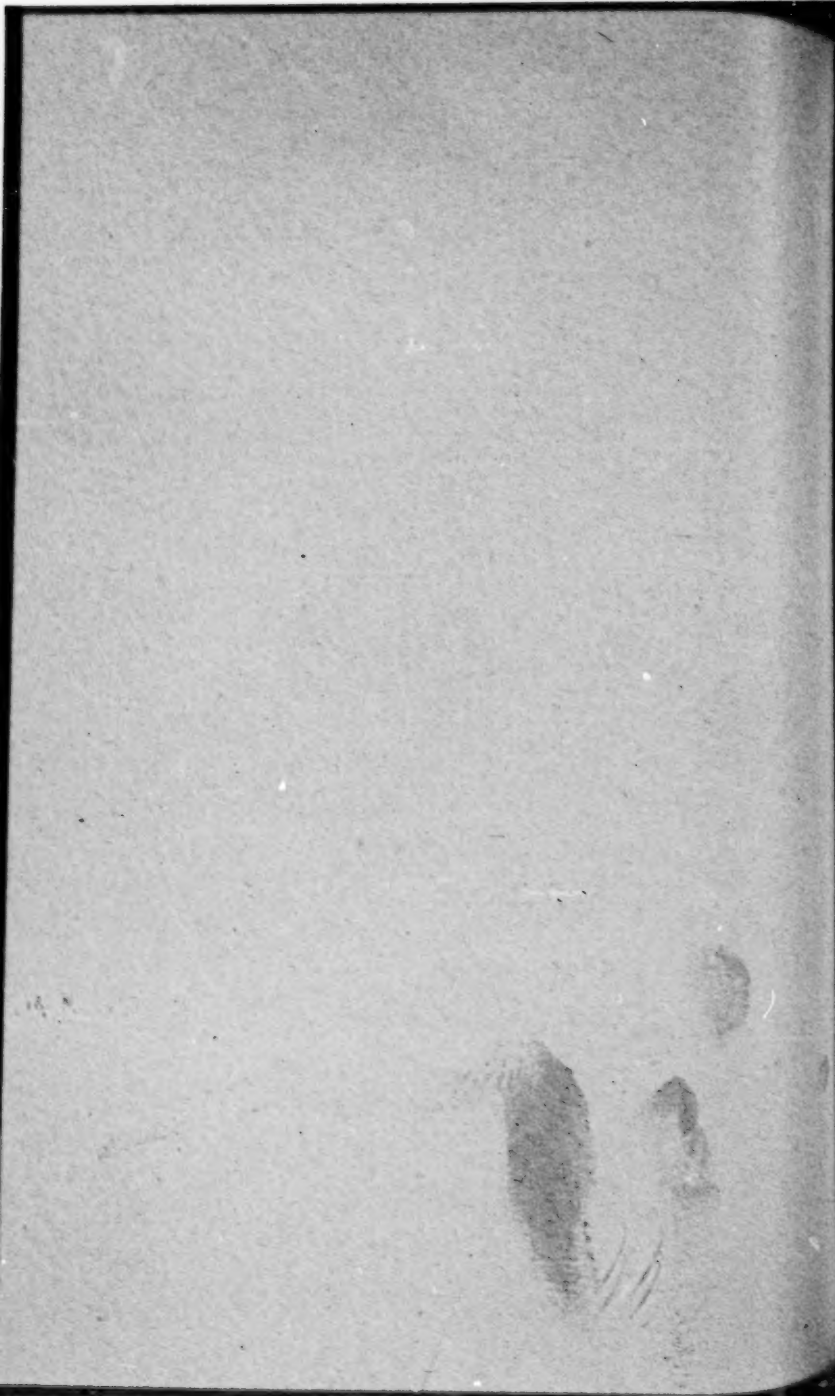
FRANK L. CHATTERTON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MONTANA
and
BRIEF IN SUPPORT THEREOF

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Petitioners,

vs.

FRANK L. CHATTERTON,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MONTANA**

and

BRIEF IN SUPPORT THEREOF

**TO THE HONORABLE THE SUPREME COURT
OF THE UNITED STATES:**

Your petitioners, Mary Vielle Lukin, Mary Lukin,
administratrix of the estate of John Vielle, deceased;
Mary Vielle, Francis Vielle, Peter Vielle, Cecille Vielle
Trombley, Isabelle Vielle, Theresa Jarvis, Martha
Vielle Gallineaux, respectfully pray for a writ of cer-

tiorari herein to review a certain final decision of the Supreme Court of the State of Montana, being the highest Court of said State, the opinion and decision of said Court having been rendered and filed December 12, 1944 (R. 65-69), and a petition for rehearing having been filed (R. 69) and denied by said State Court on January 23, 1945 (R. 88), and by which said decision the said Court, affirming a decree of the Trial Court in a quiet title action, held Frank L. Chatterton was the owner of two hundred eighty acres of land situate on the Blackfeet Indian Reservation in Montana originally allotted by a trust patent to the Indian father of the above named petitioners, and that said petitioners, Indian wards of the United States and defendants in said action, had no right, title nor interest in said lands.

SUMMARY STATEMENT OF MATTER INVOLVED

Petitioners are Blackfeet Indian wards of the United States, residing on the Blackfeet Indian Reservation in Montana, and the administratrix and heirs of John Vielle, deceased, who died July 8, 1940, and who during his lifetime was a Blackfeet Indian ward of the United States residing on the said Indian Reservation (R. 4, 7).

On January 24, 1921, the United States issued a trust patent to John Vielle, a Blackfeet Indian ward of the United States, embracing three hundred twenty acres of land situate within the Blackfeet Indian Reservation, within the State of Montana, supplemental to a similar trust patent theretofore issued to him on

May 23, 1918 (R. 37, 38). The trust provisions of this patent (R. 37, 38) state:

"Now know ye, that the United States of America, in consideration of the premises, has allotted, and by these presents does allot, unto, the said Indien, the land above described, and hereby declare that it does and will hold the land thus allotted (subject to all statutory provisions and restrictions) for the period of twenty-five years, in trust for the sole use and benefit of the said Indian, and at the expiration of said period the United States will convey the same by patent to said Indian in fee, discharged of said trust and free from all charge and incumbrance whatsoever; but in the event said Indian dies before the expiration of said trust period, the Secretary of the Interior shall ascertain the legal heirs of said Indian and either issue to them in their names patent in fee for said land, or cause said land to be sold for the benefit of said heirs as provided by law; and there is reserved from the lands hereby allotted, a right of way thereon for ditches or canals constructed by the authority of the United States."

On January 25, 1921, the United States issued what is referred to as a fee patent embracing the lands included in the preceding trust patent (R. 23). The latter patent after referring to an order of the Secretary of the Interior directing a fee simple patent to issue to John Vielle for the same land as is described in the trust patent to said John Vielle, contains the following provisions (R. 24):

"Now know ye, that the United States of America, in consideration of the premises, has given and granted, and by these presents does give and grant, unto the said claimant and to the heirs of the said claimant the land above described; **to have to hold the same, together with all the rights, privileges,**

immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States." (Emphasis supplied.)

The latter patent was sent to the office of the Indian Superintendent of the United States at Browning, Montana, where it has remained at all times since, manual delivery of same never having been made to nor accepted by John Vielle (R. 23, 38-41, 48). John Vielle could sign his name but could not otherwise read nor write (R. 48).

Apparently upon learning in April, 1931, that a fee patent was in the office of the Indian Superintendent, John Vielle on April 10, 1931, made and filed in the office of the Blackfeet Indian Agency an application under oath requesting cancellation of the fee patent and reciting that he had never applied for nor wanted such patent (R. 40, 41). On March 30, 1932, Indian Commissioner Rhoads notified the Blackfeet Indian Agent that because John Vielle had made application in his own handwriting for a fee patent there were no grounds for cancellation of same (R. 46). Thereupon, on Sept. 12, 1932, John Vielle filed another affidavit and request for cancellation of patent reciting substantially that when he signed the application he did not know he was signing such, that he thought he was signing a partnership paper with two named persons to go into the oil business, that he could not speak the English language fluently, could write his name but not read nor write any other English words,

and directed attention of the government to the fact that when he learned there was a fee patent at the Agency Office he refused to accept same (R. 48, 49). This affidavit and request were transmitted by the Indian Superintendent to the Commissioner of Indian Affairs with a recommendation for further consideration with the view of cancellation of the fee patent (R. 50). This latter request and affidavit were returned to the Indian Superintendent with a letter from the Indian Commissioner stating, in substance, that the affidavit of John Vielle to the effect he did not know he was making application for a fee patent did not vitiate his formal application and, therefore, there were no grounds for cancellation of the patent (R. 50). The duplicate original of the alleged sworn application for fee patent of John Vielle shows no signature of any officer authorized to administer oaths and appears to be an unsworn statement (R. 42, 43).

On July 3, 1929, the treasurer of Glacier County executed a tax deed to Glacier County, Montana, as the purchaser at a purported tax sale of two hundred eighty acres of the above mentioned land for taxes assessed by Glacier County against said land for the year 1921 and were not paid by John Vielle (R. 27-29). October 22, 1940, Glacier County executed a quitclaim deed to Frank L. Chatterton embracing this land (R. 25-27), and on November 29, 1941, said Chatterton, as plaintiff, commenced an action against the heirs of John Vielle, your petitioners, as defendants, alleging, in effect, his ownership and that defendants claimed some right, title or interest in the land ad-

verse to plaintiff, which claims of defendants were groundless and without right. Substantially, he prayed that defendants be required to set forth the nature of their claims, that it be adjudged he had valid title to the land, that defendants had no interest or estate therein, and that plaintiff be given relief generally (R. 2, 3).

Defendants filed an answer and cross-complaint in the action (R. 3-10) wherein they denied plaintiff owned the land, alleged defendants' ownership as heirs of John Vielle (R. 3, 4), and by cross-complaint alleged specially that on May 23, 1918, a trust patent embracing the land had been issued to John Vielle wherein the United States expressly agreed, conformably to statute, to hold the land allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian, John Vielle, and at the end of twenty-five years convey same to him in fee, discharged of the trust and free from all charge and encumbrance whatsoever, and that without application therefor and without his consent the United States, on January 25, 1921, issued a patent in fee to John Vielle, which was never in fact delivered to him and which he expressly refused to accept, and which patent was issued contrary to law and was void (R. 4, 5, 7). The cross-complaint further alleged an attempted assessment and levy of taxes against said land by Glacier County, that said lands were not taxable and the tax assessment and levy were wrongful and void and that the attempted sale of the land to Glacier County for unpaid taxes and the attempted sale to plaintiff were wholly invalid (R. 5-8). The

cross-complaint further alleged failure of Glacier County to comply with the requirements of the statutes of Montana precedent to a valid tax assessment, levy and sale for delinquent taxes (R. 8-9) and prayed that defendants be adjudged owners of the land and their title thereto quieted (R. 9) and incidental relief.

The plaintiff demurred to the answer and cross-complaint assigning insufficiency thereof to state a defense or a cause of action (R. 10), which was taken under advisement by the Court (R. 10) and apparently was never ruled upon.

Thereafter the plaintiff Chatterton filed an affidavit, purportedly under Section 2214, Revised Codes of Montana, specifying sums of money paid as the purchase price of the land, taxes, and for improving and preserving the property (R. 10-12) and the Court ordered defendants to deposit the total sum of \$1,270.51 as prayed in the affidavit or show cause for not doing so (R. 12). The defendants moved to quash the order to show cause on the grounds of legal insufficiency of the affidavit to support the order (R. 13, 14), and also made answer to the order wherein defendants substantially alleged the facts of the Indian wardship of John Vielle, the issuance of the trust patent, issuance of the so-called fee patent without his application, his refusal to accept the latter patent, the nontaxable character of the land as restricted Indian land under the special treaty of 1887 between the Blackfeet Tribe and the United States, and the consequent invalidity of the taxes levied by Glacier County, and alleged the invalidity of the tax proceedings

precedent to the taking of the tax deed to the land by Glacier County, plaintiff's predecessor, and set forth defendants' ownership of the lands as Indian heirs of John Vielle (R. 14-18).

Hearing upon the order to show cause was held April 22, 1942 (R. 21-58), and plaintiff introduced the fee patent issued to John Vielle (R. 23), a quit-claim deed to the land from Glacier County (R. 25, 26), a tax deed describing the same land executed by Treasurer of Glacier County to Glacier County for purported delinquent taxes against the land (R. 27-29), a contract of purchase between Chatterton and Glacier County for the land (R. 30, 31). Testimony was given on behalf of plaintiff concerning payments of taxes and improvements upon the land (R. 32-35). The defendants introduced in evidence the trust patent from the United States to John Vielle (R. 37, 38), the affidavits of John Vielle, constituting part of the official records of the Indian Department (R. 40, 47-49), reciting he had never applied for a fee patent, and his refusal to accept same, nondelivery thereof to him, his request for cancellation, etc., hereinabove more particularly described. The plaintiff then introduced in evidence a purported application for fee patent bearing the signature of John Vielle (apparently unsworn to) (R. 42-44) and copies of letters from the files of the Indian Office indicating approval of application for fee patent and refusal by the department to cancel same at Vielle's request (R. 42-46, 50).

October 6, 1942, the County District Court made an order filed October 13, 1942, requiring defendants

to deposit in that court \$1,270.51 to the use of the plaintiff within thirty days and providing that should "defendants fail to make the deposit decree quieting title to said lands in plaintiff shall be entered herein" (R. 18, 19). The defendants having failed to make the deposit the court, upon plaintiff's application, entered the defendants' default in the action (R. 61, 62) and rendered and entered a judgment by default against defendants adjudging plaintiff to be the owner of the land and that defendants have no title or interest of any kind in the land (R. 19, 59-61).

At the time of the rendition of this default judgment no precedent action had been taken by the county district court upon the demurrer of plaintiff to answer and cross-complaint of the defendants (R. 10, 3-10), nor was there filed any reply of plaintiff raising any issues on the affirmative allegations of the cross-complaint.

Defendants appealed from the judgment to the Supreme Court of Montana (R. 63) and the cause having been submitted for decision to said Supreme Court on September 22, 1944 (R. 65) that Court affirmed the judgment December 12, 1944 (R. 65) and filed the opinion of the Court December 12, 1944 (R. 65-69). Petition for rehearing was filed January 9, 1945 (R. 69) and denied January 23, 1945 (R. 88). On April 20, 1945, Associate Justice of the Supreme Court, Honorable Wm. O. Douglas, extended the time to and including May 18, 1945, for filing their petition for a writ of certiorari in this cause by petitioners (R. 89).

The Supreme Court of Montana held:

1. That affidavits of Indian patentee John Vielle filed by him and constituting part of the records of the Indian Department and showing that he had made application for a fee patent under a mistake of fact, that he was not competent to administer his own affairs, and requested cancellation of the fee patent when he learned of its issuance, offered by defendants in evidence at the hearing on the order of the county district court to show cause, was incompetent evidence because it constituted a collateral attack upon a fee patent (R. 66).
2. That manual delivery of the fee patent was not accepted by the Indian patentee is of no significance as the patent required no delivery to be effective (R. 66).
3. That the application of John Vielle converted his trust patent into a fee patent and upon issuance of the fee patent to him the land embraced therein became subject to taxation and sale by the State of Montana and the conveyance by Glacier County to Chatterton of the land (purchased at the tax sale by Glacier County) conveyed title to Chatterton and the decree of the lower court (adjudging Chatterton to be the owner of the land in fee simple) was proper (R. 67-69).
4. That it was unnecessary for the Montana Supreme Court to pass upon the question of the sufficiency of the evidence to make a case under Section 2214 Revised Codes of Montana, calling for a deposit in court by the alleged true owner for the use of the

tax deed grantee because the appellants (petitioners) put their defense on the ground that the lands were exempt from state law levies and sale upon non-payment of taxes because such defense was untenable (R. 68, 69).

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under the provisions of Section 237 of the Judicial Code, as amended, 28 U.S.C.A. Section 344. The grounds therefor are:

1. The Supreme Court, the highest court of the State of Montana in which a decision could be had, on December 12, 1944, rendered a decision (which became final on January 23, 1945, R. 65-69, 88), confirming the validity of an assessment, levy and sale, for taxes by a state agency of lands, allotted to a reservation Indian, contrary to the provisions of the Congressional Indian Allotment Act of 1887, 25 U.S.C.A. Section 348, as amended, 25 U.S.C.A. 349, and contrary to the special agreement made between the United States and the Blackfeet Indian Tribe, set forth at length in Volume 25 of the United States statutes at large, page 113, and which decision unless annulled will deprive petitioners of their property without due process of law and deny them privileges and immunities in contravention of section 1 of amendment 14 of the Constitution of the United States.

The aforementioned decision and opinion of the court appears in the record on pages 65 to 69, and 88, and is reported in 154 Pac. (2d) 798, but has not yet

been reported in the official published reports of the Montana Supreme Court.

The questions were raised in the following manner. In the county district court, the court of first instance, the plaintiff, Mr. Chatterton, alleged he was the owner of the land involved and alleged the defendants, petitioners here, claimed some right, title or interest in the land adverse to plaintiff (R. 2) and that defendants' claims were without right (R. 3). The answer and cross-complaint of defendants denied plaintiff's ownership (R. 3) and alleged defendants were the owners of the land (R. 4). The defendants further pleaded:

(a) The issuance, by the United States in 1918, of a trust patent to their father under the acts of congress wherein and whereby the land was allotted to their Indian father and provided that the United States would hold the land in trust (subject to all statutory provisions) for 25 years in trust for the sole use and benefit of said Indian and at the expiration of such period convey the land by patent to said Indian in fee discharged of the trust and free from all charge and encumbrance (R. 4, 5).

(b) That on January 5, 1921, a fee patent was issued to the land without the Indian father having applied for same, that same was never delivered to nor accepted by him, and was issued contrary to the law and was void (R. 5).

(c) That said allotted lands were not subject to taxation by the State of Montana and during the trust period the said State taxed said lands and sold same

for delinquent taxes and then sold the land to plaintiff, and that said purported assessment and levy of taxes and said sales were void as in contravention of the statutes of the United States under which said Indian held the land and under which defendants as his heirs claimed the land (R. 4-8).

(d) That plaintiff knew at all times that said Indian, John Vielle, and his heirs, respectively, claimed the land (R. 8).

The questions were again presented to the same district court by motion to quash the order of that court to show cause directed to said defendants (R. 12-14) and by answer of defendants to said order (R. 14-18) and at the hearing on the order (R. 21-58) by introduction in evidence by defendants of the supplemental trust patent issued to their Indian father (R. 37, 38) containing the express agreement of the United States to hold the land in trust and of affidavits of John Vielle constituting part of the official records of the Indian Department (R. 39, 40, 47-49) wherefrom it appears no application for a fee patent was in fact made by said Indian, no delivery nor acceptance thereof, and a request by him for its cancellation, and by the testimony of the clerk of the Black-foot Indian Agency Office that the fee patent to the Indian had never been delivered to the Indian and still remained in the custody of the Indian Office (R. 35, 36, 38, 39).

The said district court by its orders requiring a cash deposit as a condition of defendants being permitted to prove the allegations of their answer (R. 18, 19)

and by rendition and entry of a default decree adjudging plaintiff's ownership of the land, in effect, ruled against defendants on all questions presented (R. 19-21, 61, 62).

On appeal to the Supreme Court of Montana the legal questions were presented by specifications of error in the brief of appellants, petitioners here, to the effect that the district court had erred in holding that the allotted lands were subject to taxation and sale by the State of Montana and that the Indian lost his title by virtue of a tax levy and sale of the property for delinquent taxes thereon, and further erred by requiring the deposit of money by defendants of the amount of taxes and value of improvements as a condition precedent to defendants being permitted to offer evidence under their answer and cross-complaint to show the land was non-taxable Indian land, and in rendering a default decree against them by reason of their failure to deposit said money. That appellate court held against the said appellants on the questions presented by its affirmance of the decree of the district court and holding that the land involved was taxable and had been lost to the Indian and his heirs (said appellants) by the tax levy and sale by the State of Montana for non-payment of the taxes (R. 65-69). (See appendix hereto.)

The questions involved are substantial in that they involve the present ownership of a tract embracing 280 acres of land by petitioners as Indian heirs of a deceased Indian allottee and involve points of law of importance generally to Indian allottees of land on the Blackfeet Indian Reservation and their heirs.

That this Court has jurisdiction to review the decision of the Supreme Court of Montana in cases of this character is manifest.

Ward v. Love,
253 U.S. 17, 64 L.ed. 751,

Longest v. Langford,
276 U.S. 69, 72 L.ed. 471.

QUESTIONS PRESENTED

1. Whether an allotment of land on the Blackfeet Indian Reservation made to a Blackfeet Indian under a trust patent issued by the United States in 1918 to such Indian may be taxed by the State of Montana during the twenty-five year trust period and sold upon non-payment of such taxes by the Indian allottee where such trust patent contains the express promise of the United States to hold the allotted land for the period of twenty-five years in trust for the sole use and benefit of said Indian, or in case of his decease, of his heirs, and at the expiration of said period to convey same by patent, to said Indian, or his heirs, in fee discharged of said trust and free and clear of all charge or encumbrance whatsoever, and where by special agreement between the United States and the Blackfeet Indians made prior to said allotment to the Indian it was expressly agreed by the United States that upon approval of an allotment to a Blackfeet Indian by the Secretary of the Interior he shall cause to issue a patent to the land in the name of the allottee, which patent shall be of the legal effect and declare that the United States does and will hold the lands thus allotted for the period of twenty-

five years in trust for the sole use and benefit of said Indian, or in case of his decease, of his heirs, and where approximately three years after the issuance of the trust patent a fee simple patent was issued to said Indian granting the same land to him and his heirs and containing the following provision: "to have to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever." The latter patent was issued upon a written application for a fee simple patent bearing the signature of the Indian who could not otherwise read or write, was never actually delivered to nor accepted by the Indian, and has remained at all times in the custody and control of the Indian Department, and when the Indian learned the patent had issued protested same and filed affidavits with the Indian Department reciting he had never made application for the fee simple patent, that he could sign his name but not read or write English words, and that when he signed the application he understood he was signing an agreement to go into the oil business with two persons who he named and requested the fee simple patent be cancelled. The Blackfeet Indian Office recommended the patent be cancelled, but the Indian Commissioner held the fact the Indian did not know he was signing an application for patent did not vitiate the formal application and cancellation was refused. At the time of the issuance of the trust and fee patents mentioned there was also in general effect a general statute of the United States

which, among other things, provided for issuance of trust patents to Indians under which the United States agreed to hold the land in trust for the Indian for a twenty-five year period, which statute was passed by Congress in 1887, 25 U.S.C.A. 348, and was amended May 8, 1906, 25 U.S.C.A. 349, to provide, among other things, "that the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian managing his or her affairs, at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed." Petitioners contend the land is non-taxable.

2. Whether a delivery to the Indian of a fee simple patent to an allotment of land held in trust by the United States is required under the statutes of the United States to make said patent fully effective, between the United States and the Indian so as to vest a fee simple title to said land in the Indian. Petitioners contend delivery essential.

3. Whether in a quiet title action by a purchaser of land from a county bought by such county at a tax sale of a tract of land for delinquent taxes in which action Indian heirs of a deceased Blackfeet Indian ward of the United States claiming ownership of land allotted under a trust patent issued to said Indian ward by the United States were joined as defendants, such Indian heirs had the right to show by evidence that a purported fee simple patent to said land was issued without a valid application for such

patent by the Indian patentee by affidavits executed and filed with the Indian Department as part of its official records by the patentee prior to his death wherein he stated he had made no application for such patent, that same had never been delivered to him, that he was not competent, that when he signed the application he did not know it was for a fee patent but that he was signing partnership papers with two named persons, and that as soon as he learned a fee patent had been issued he refused to accept it, that he did not want a fee patent, that he had never mortgaged any part of the land, and in which affidavits he requested cancellation of the fee patent and by testimony of the custodian of the fee patent showing that same was still in the possession of the Indian Department and had never been actually delivered to the Indian patentee or his heirs. Petitioners contend the invalidity of the fee patent could be so shown and their ownership be established by the trust patent and acts of Congress under which same was issued and Petitioners contend they were deprived of privileges and immunities and of their property without due process of law.

4. Whether petitioners, Blackfeet Indian heirs of their deceased Indian father, were denied a privilege or immunity and deprived of their property without due process of law by rendition and entry by the state court of a default decree against them, as defendants, in a quiet title action involving land originally allotted their father wherein they had filed an answer and cross-complaint substantially alleging their ownership of the land and that plaintiff's claim

of title was invalid as being based upon a sale of the land for unpaid taxes unlawfully levied by the State of Montana upon Indian land at the time exempt from taxation by virtue of express agreement made between the United States and the Blackfeet Indians; and which default decree was rendered because defendants had failed to deposit money required by the state court by an order requiring the defendants to deposit in court to plaintiff's use the sum of \$1,270.51, representing the amount paid by plaintiff to Glacier County as the purchase price of the land, the amount of taxes levied thereon and the amount expended by plaintiff in improving the land. At the time the said court's order was made Section 2214, Revised Codes of Montana, among other provisions, contained the following provisions:

"Provided further that in any action now pending, or hereafter brought to set aside or annul any tax deed, or to quiet title, or to determine the rights of such purchaser, including the county, or his successors, to real property claimed to have been acquired by reason of tax proceedings or a tax sale, the purchaser or his successor upon filing an affidavit may obtain from the court an order directed to the person claiming to own the property, or to have any interest in or lien upon said property, or a right to redeem the same, or claiming rights hostile to the tax title (which said person is herein, for convenience, called the true owner), commanding him to deposit in court, to the use of the tax purchaser or his successors, the amount of all taxes, interest and penalties which would have accrued if said property had been regularly and legally assessed and taxed as the property of said true owner and sold for delinquent taxes and was about to be redeemed by him, and the amount of all sums

reasonably paid hereafter by said purchaser or his successors after three years from the date of said tax sale in preserving said property or in making improvements thereon while in possession thereof, as the total amount of said taxes, interest, penalties and improvements is alleged by the plaintiff and shall appear in said order, or to show cause on a date to be fixed in said order, not exceeding thirty days from the date thereof, why such payments should not be made," and

"Upon the hearing of the order to show cause the court shall have jurisdiction to determine said amount and to make an order that the same be paid into court within a given time, not exceeding thirty days after the making of said order. If such amount, when so determined, shall not be paid within the time fixed by said court, then said true owner shall be deemed to have waived any defects in the tax proceedings and any right or redemption, and thereupon, irrespective of any irregularities, defects or omissions or total failure to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes, and the giving of notices, including notices of redemption, or concerning tax deeds, whether or not such omissions or failures makes said proceedings void (other than that the taxes were not delinquent or have been paid), the title of such true owner shall not be quiet as against said purchaser or his successors, and a decree shall be entered in said action quieting the title of said purchaser or his successor as against said true owner. If such payment shall be made into court, and said true owner shall be successful in said action and said tax proceeding shall be held void, said sum shall be paid to the purchaser or his successors."

REASONS FOR GRANTING PETITION

The Supreme Court of Montana held that the issu-

ance of the fee patent to the Indian removed the exemption of the land from taxation, notwithstanding the conceded non-delivery of the fee patent to the Indian and that the affidavits made by the Indian appearing in the records of the Indian Department disclosed that the Indian could not read nor write and that the application for the fee patent was signed by the Indian under the mistake of fact that it was a partnership agreement to go into the oil business with two named persons, and cancellation thereof was requested by the Indian.

The decision of this Court in *Carpenter v. Shaw*, 280 U.S. 363, 74 L.ed. 478, 481, held that where land granted an Indian under an agreement between the United States and the tribe whereby such land was inalienable by the Indian and exempt from taxation for a specified period of time, the subsequent removal of the restriction against alienation of the land by Act of Congress did not render the land granted the Indian subject to taxation by the State during the original period provided for the exemption as the tax exemption was a property right of the allottee and was not subject to repeal by later congressional legislation.

The decision of this Court in *Choate v. Trapp*, 224 U.S. 665, 56 L.ed. 941, held that a subsequent act of Congress removing restriction on alienation and declaring land of Indians from which restrictions had been removed should be subject to taxation did not render taxable land of Indians granted to an Indian pursuant to agreement or statute pertaining to an Indian Tribe where a consideration, by way of tribal

relinquishment of a right of occupancy of land, passed from the tribe. Under the special agreement between the Blackfeet Tribe and the United States set forth in 25 Statutes at large 113, the Blackfeet Tribe relinquished its right of occupancy to certain lands.

The decision of this Court in *Ward v. Love County*, 253 U.S. 17, 64 L.ed. 751, held that an allottee who paid taxes on land to a state could recover same where the lands were originally granted the Indian pursuant to agreement between the United States and an Indian Tribe, and were immune from taxation notwithstanding a subsequent act of Congress declared the land taxable after removal of restrictions.

The decision of the Montana Court is probably in conflict with the foregoing decisions.

The Supreme Court of Montana held that the defendants could not in this action show that the fee patent was void by reason of same having been issued without a valid application for same having been made by the Indian trust patentee (R. 65, 66) as same would constitute a collateral attack upon the patent.

This Court in *Borax Consolidated, Ltd., v. City of Los Angeles*, 296 U.S. 10, 80 L.ed., held that in a quiet title action a party thereto could attack a patent from the United States to land as being void where such patent was issued in a case where the Interior Department had issued same without the right to convey same.

This Court in *Wright v. Roseberry*, 121 U.S. 488, 30 L.ed. 1039, held a patent could be attacked colla-

terally where the patent was issued in violation of a statute.

The decision of the Montana Supreme Court is probably in conflict with the foregoing decisions of this Court.

The Montana Supreme Court held that the non-delivery and non-acceptance of the fee patent by the Indian trust patentee was of no significance as the issuance of the fee patent was conclusive upon him (R. 66). The general allotment Act, 25 U.S.C.A., Section 348, expressly requires the fee patent to be delivered to the allottee entitled thereto.

The questions involved are of importance to many Indian members of the Blackfeet Indian Tribe claiming to own land under similar facts and circumstances as are involved in the decision of the Supreme Court of Montana in this case and multiplicity of actions on the part of such Indians will be avoided if this Court accept jurisdiction and determine the questions involved.

For these reasons it is respectfully submitted that this petition should be granted and the decision of the Supreme Court of Montana be annulled.

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The, undersigned, attorney for the Petitioners named in the foregoing petition, hereby certifies that said petition is well founded and not interposed for delay.

E. J. McCABE,
Attorney for Petitioners.

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